

USING READ-ALoud PROTOCOLS AS A METHOD OF INSTRUCTION

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Brutal Choices in Curricular Design ... is a regular feature of *Perspectives*, designed to explore the difficult curricular decisions that teachers of legal research and writing courses are often forced to make in light of the realities of limited budgets, time, personnel, and other resources. Readers are invited to comment on the opinions expressed in this column and to suggest other "brutal choices" that should be considered in future issues. Please submit material to Helene Shapo, Northwestern University School of Law, 357 East Chicago Avenue, Chicago, IL 60611, (312) 503-8454, fax: (312) 503-2035.

Introduction

How often have your students come to you after you have graded a paper to tell you, sometimes apologetically and sometimes not, that they proofread their paper at least a dozen times and never caught the typos and ambiguities that you marked in their paper before you returned it to them? How often have your students railed at your school's honor code or plagiarism policy, telling you that it is unrealistic to forbid them to let someone else read their drafts before they hand them in and that they would like someone else to read their papers so that person can tell them whether the papers are clear.

One of the hardest things for writers to do is to put themselves into their readers' shoes and experience their writing as an outsider would. Most

writers read their texts with their own syntax already in mind. They pause at all the places needed to understand a long sentence, and they do not see ambiguities, because they know how their text is supposed to sound and what it is supposed to mean. This is particularly true of novice writers, who have not yet internalized the discourse of the profession and do not know how readers will understand their texts. Thus, our students have a point when they tell us that they did not see their mistakes and that they would have benefited if someone else had been allowed to read their drafts for clarity.

Our colleagues in English departments have known for quite a while that one way to gain insight about how an intended reader is experiencing a text is through a read-aloud protocol.² In the typical read-aloud protocol, students are asked to come to class with a draft of a work in progress. They are either assigned to a partner or allowed to choose a partner. Students are asked to read their partners' papers out loud, verbalizing their mental impressions and thought processes as they are reading. The pedagogical goal of this exercise is to let student writers experience readers other than themselves trying to make sense out of their drafts. The writer learns of potential difficulties intended readers might have with the text as they stumble over the long sentences or say out loud, as part of the protocol, that they don't understand what the writer means or that they haven't been convinced by a particular analogy. Once writers see these difficulties, which often pass unnoticed as they read the draft themselves, they are better prepared to revise the text so that the reader can understand it in the way that the writer intends.³

Deciding whether to use the read-aloud protocol in a legal writing class requires consideration of competing benefits and concerns. This column presents both sides of the case, and then offers a description of the "compromise" approach I followed recently in my legal writing class.

¹ I would like to thank Jo Anne Durako, Director of Legal Research and Writing at Rutgers School of Law at Camden, New Jersey, for her generosity in sharing a draft of her "Brutal Choices" column with me before its publication in the Winter 1999 issue of *Perspectives*. Jo Anne Durako, *Peer Editing: It's Worth the Effort*, 7 *Perspectives: Teaching Legal Research and Writing* 73 (1999). I would also like to thank Brian Williams, Director of Legal Research and Writing at Cornell University, for his thoughtful comments and Helene Shapo, Director of Legal Writing at Northwestern University School of Law, for supporting me in doing this exercise and for her valuable critique of a draft.

² I learned about read-aloud protocols at the Colloquium on Legal Discourse, organized by Theresa Phelps and Linda Edwards, and held at Notre Dame University in July 1998. At the Colloquium two dozen experienced legal writing professionals spent an intensive week meeting with scholars in the areas of composition, audience, narrative, ethics, and jurisprudence.

³ See James F. Stratman, *Teaching Lawyers to Revise for the Real World: A Role for Reader Protocols*, 1 *J. Legal Writing Inst.* 35 (1991). These are sometimes called "reader protocols" or "think-aloud protocols."

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Benefits

Real-World Simulation

A legal writing class should be an ideal place to incorporate read-aloud protocols, since the objective of a piece of legal writing is to enable someone in the real world to act on the basis of what the writer has written. Lawyers write memos to provide an assessment of the law so that a supervising attorney can determine whether to take a case or how to advise a client. They write briefs to convince judges that a client's position is right. By hearing how a reader understands and reacts to their documents, law students can learn a great deal about the revisions necessary for the document to serve its intended purpose for its intended reader.

Encourages Preparation

Many students, even if they begin the work on a writing assignment immediately after it is assigned, tend to procrastinate about beginning to write the paper. A read-aloud protocol held several days before a paper is due encourages students to begin working on their papers early enough that they will have a draft to bring to the class. It also ensures that they will have sufficient understanding of the topic both to give and receive meaningful feedback. Although the read-aloud protocol certainly could provide useful feedback at any stage of the writing process, I particularly like using it toward the end, because in the earlier stages writers are more likely to see problems on their own since they are more obvious. In contrast, at the later stage, writers are often so used to their drafts that they have blinders on and are unable to see things that another reader notices immediately.

Process Oriented

The read-aloud protocol supports the current legal writing pedagogy that emphasizes “process” and not “product.”⁴ The rationale underlying the protocol is that difficulties that the reader has with the draft, such as gaps in logic or an inadequately explained analogy, are likely to be precisely those problems that student writers are unable to see because they are too close to the draft. However, the protocol offers them the opportunity to learn about these problems while the work is still “in process” and they have an opportunity to revise it.

⁴ See Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 Wash. L. Rev. 35, 51–56 (1994).

The protocol is a powerful tool in forcing students to wrestle on their own with difficulties in their drafts. They will learn far more from their own struggles with their drafts than they will from us identifying the problem and suggesting a solution after the fact as we grade the completed assignment.

Collaboration

An additional advantage of read-aloud protocols is that they allow students to work in a collaborative environment, one that is somewhat closer to the working world they will be entering than to the individualistic competitiveness of the typical law school environment. By giving assistance to each other and receiving assistance from each other, students learn how to accept constructive criticism from their peers, as well as how to give that criticism in a diplomatic yet helpful manner.

Easy to Implement

In an earlier “Brutal Choices” column, Jo Anne Durako discussed the merits of peer review, a similar type of collaborative learning experience. In her article, she observed that one potential drawback to peer review is the amount of time required both to set up and to give peer reviews.⁵ Read-aloud protocols offer the same benefits of collaboration but without the same heavy investment in time. They simply require a decision about how many pages may be read and short instructions telling the readers to verbalize any thoughts that come into their mind while reading.

Concerns

Honor Code

The most obvious concern about implementing a read-aloud protocol is that it might be an honor code violation if your code forbids students from showing their work to someone else or looking at someone else's work before the paper has been handed in. Students may feel they are getting mixed messages if we introduce the read-aloud protocol in class as a good way to see their writing through the reader's eyes and then tell them that the honor code prohibits the use of this technique outside of class.

⁵ Durako, *supra* note 1, at 73.

Student Resistance

Students might resist participating in a read-aloud protocol for different reasons. Some may be reluctant to share their drafts or ideas with another member of the class. They may take a proprietary view of their drafts and not want someone else to see and possibly appropriate these ideas. Others may be embarrassed to let someone see their ideas. A related problem, which often arises in collaborative endeavors, is that of the “free rider,” where students who have not done the work participate in the exercise largely to get ideas from other class members. Finally, the timing may not be right for some students. Some will not want to have a draft done any time earlier than the night before the paper is due. Others, however, may already have a draft done and may not want to feel obliged to go back and revise it.

Partner’s Abilities

Another potential problem with read-aloud protocols is the possibility that students of different abilities or learning styles might be paired together. Since students come to law school with different skill levels and learn at different rates, it is possible that a stronger student might be paired with a weaker student, and that they might not have much to offer each other. The weaker student might not be able to see problems in the stronger student’s draft or might see problems that aren’t really there. At the same time, the stronger student might not be able to explain problems in the weaker student’s draft that the weaker student can easily understand. Students can also be mismatched by learning styles. Since the read-aloud protocol is based on reading, speaking, and listening, it works best with visual and aural learners. It is probably less effective for kinetic learners. If a kinetic learner is paired with a visual or aural learner, the kinetic learner, simply by virtue of his or her learning style, may not be as effective at seeing problems in a partner’s draft or in fully processing the oral critique from his or her partner.

A Compromise

I tried to balance these competing issues in a read-aloud protocol I used in my Legal Writing class during the 1998–99 school year. Our first appellate brief assignment was due on a Monday. I planned to do the read-aloud protocol in the class scheduled for the preceding Friday.⁶ I chose that date because it was close enough to the due date of the brief that

most, if not all, of the class members would have at least part of a draft completed,⁷ and yet they would still have the entire weekend to revise their draft based on anything they learned from the read-aloud protocol.

To solve the honor code dilemma, I asked Helene Shapo, director of Legal Writing at Northwestern, if, as a class exercise, I could have each student read his or her draft out loud to a partner, who would comment on what he or she heard. This proposal was a compromise. Although no one would be showing a draft to anyone in the class or looking at anyone else’s draft, the students still would be reading their papers to someone else, which our honor code does not allow. We decided to do the exercise in my class as a pilot project and see how it worked. We reasoned that the exception to the honor code could be permitted for a class activity with a specific pedagogical goal done under the direct supervision of the instructor.⁸

I thought it was important for the students to understand the pedagogical goals of the exercise and spent some class time the day before the exercise discussing these goals. The first goal was to give them the benefit of someone else’s reaction to their work before they submitted it to me for grading. I told them that I hoped the feedback from their partners would stave off some of the frustration they feel when their papers are returned after grading and they see things they know they could have fixed if only they had known about them beforehand. I

⁶ We have a unified Legal Writing course in which each member of the Legal Writing faculty teaches according to the same calendar. This date, however, had been left open on our syllabus for individual faculty members to use as needed for their individual classes. From the beginning of the semester, I had told my class that we would be doing a read-aloud activity on this date and to be sure to have enough of a draft completed that they could bring some of it to class to read to another class member.

⁷ In fact, this turned out to be perfect timing. For the next brief, at the request of a student who found the first one unhelpful because she had already completed her brief and didn’t want to change it, I scheduled another read-aloud protocol for a full week before the brief was due. This timing turned out to be far too early, as almost no one was far enough along to bring a draft to class, including the student who had originally requested that I do the read-aloud protocol earlier in the writing process.

⁸ After the papers were graded I compared the papers of some of the partners and could find no extraordinary resemblance. In fact, in more than half of the groups, the students in the pairs received different grades from each other.

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therefore encouraged them to bring a section of the draft that was causing them the most difficulty. The second goal was to improve their ability to critique themselves, since often, when we read something out loud, we hear it in a different way than when we read it to ourselves. I hoped that by hearing themselves as they read their own drafts, they might be able to solve problems on their own and improve their skills as self-critical legal writers.

My original plan was to assign each student a partner. However, when I announced that I would assign the teams, one student asked if I would allow them to pick their own partners. She explained that some of them were nervous about reading their papers out loud to someone else and would be more comfortable if they could work with someone they knew. I decided she was right and allowed them to choose their own partners, which, I think, encouraged their cooperation and enhanced the learning process.

On the day scheduled for the read-aloud protocol, we had nearly perfect attendance and all but one student had brought a draft.⁹ I debated banning the student who had come without a draft, but before I took action, I noticed that the students in one group had allowed this student to join them and listen to them reading their drafts. Thus, in this class, the free rider problem that materialized went away before it ever became an issue.¹⁰

Of our 50-minute class time, I allowed 10 minutes at the beginning for setup and reserved 10 minutes at the end to debrief. This left 30 minutes for the read-aloud exercise, approximately 15 minutes for each reader. The students had no trouble completing the assignment within that time frame.

In the debriefing session at the end of the class, the vast majority of the students thought their partners gave them ideas they had not thought of on their own. When we addressed the insight they gained from reading their own papers, they were less enthusiastic. Although they did not think it was completely unhelpful, only one student found it to be a big help in enabling him to see things that he hadn't seen when reading the paper to himself. Several students also mentioned that as listeners, they found it difficult to concentrate on the substance of what their partners were reading,

⁹ The student without the draft was a parent who had been dealing with a sick family for two weeks and who ultimately was given an extension on the due date.

concluding that they could have given better feedback if instead they had been allowed to read their partners' drafts and give them written comments. At the end of the discussion, one student asked if we could do a similar exercise on the next brief but let the students read each others' drafts. This change would have turned the activity into a peer review, and we did not want to do a peer review while the students were still working on their papers. Although we chose not to create a further exception to the honor code at that time, the student's inquiry generated a discussion of the pros and cons of doing a read-aloud protocol and of the various methods for doing one.¹¹

Conclusion

The read-aloud protocol is one of several active learning exercises that I have incorporated into my teaching in the past several years. Of these various exercises, which have included role playing, group writing, and student-led discussions, the read-aloud protocol was probably the most effective. Students quickly understood that, unlike some of the other active learning exercises, the read-aloud protocol potentially could help them improve a graded assignment before it was handed in. This awareness gave them the incentive to come to class prepared and to work very hard at offering each other constructive commentary. By investing themselves in the exercise, they took a lot away from it.

I intend to use the exercise again, and even to expand it to some first-semester work. For example, after the semester was over, one student told me that a read-aloud protocol would have been helpful in learning how to give specific reasons for analogies and distinctions. As a result of this suggestion, I plan to add a short writing exercise and a read-aloud protocol to my teaching of analogies.

At the same time, however, I would prefer to modify the way I used the read-aloud protocol. Rather than the “compromise” approach, where

¹⁰ This may have been due to the chemistry of the class. They were a wonderful class both in allowing me to experiment with different teaching methods and in giving feedback to me about what worked for them and what did not. However, it may have also been that we had been working in small groups since the beginning of the fall semester and they were used to collaborating and sharing ideas. In any event, I do not mean to suggest that all free rider problems will disappear so easily.

¹¹ The discussion was so spirited it became the genesis for this article.

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students read their own papers out loud, I want to use the more “traditional” method of having students read their partners’ papers out loud. I am convinced the reaction of the readers will be more thoughtful if they can react to what they are reading themselves, as opposed to reacting only to what they are hearing someone else read. This more traditional approach does create more ambiguity under our honor code, because we would be sanctioning an activity in class that is prohibited outside of class. However, the risk of ambiguity is outweighed by the benefits of the read-aloud protocol. It enables students to identify problems in their drafts when they still have a chance to edit their papers, and it reduces the frustration that comes when an obvious error they didn’t see is pointed out to them only after the graded paper is returned. In my opinion, the advantages sufficiently outweigh the drawbacks of the read-aloud protocol being incorporated into the Legal Writing curriculum.

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